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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,141	12/01/2003	R. Gary Diaz	053787/0119	8879

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EXAMINER

THANH, QUANG D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,141

Applicant(s)

DIAZ ET AL.

Examiner

Quang D. Thanh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005 and 26 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17, 18 and 20-52 is/are pending in the application.
- 4a) Of the above claim(s) 38-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 18, 20-37 and 50-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This office action is responsive to the preliminary amendment filed on 4/26/04. As directed by the amendment: claims 17, 23,32,38-40,44,46,49 have been amended, claims 1-16 and 19 have been cancelled, and new claims 50-52 have been added. Thus, claims 17-18, 20-52 are presently pending in this application.

Election/Restrictions

1. Applicant's election with traverse of group I (claims 17-43 and 50-52) in the reply filed on 2/14/05 is acknowledged. The traversal is on the ground that "the process for applying the product as claimed cannot be practiced with another materially different product that does not require the elements of the broadest product claim". This is not found persuasive because the process for applying the product as claimed can be practiced with another materially different product that does not require elements such as an absorbent portion or an array of removable devices with each device removably coupled to at least one other device , as recited in the product claim.
2. Applicant's election with traverse of Species A (figs. 7-8) in the reply filed on 2/14/05 is acknowledged. The traversal is on the ground that "these species distinctions for the reason that at least claims 50-51 are generic for a means for reducing pressure, friction, and shear with an array of removable devices, as shown in both Figures 7 and 8 and Figures 10 and 11". This is not found persuasive because only claim 50 is generic (and not 51) and claim 50 is not allowable at this time as shown below in this office action.

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3. Therefore, the requirement is still deemed proper and is thus made FINAL. At this time, claims 17-18, 20-37 and 50-52 appear to be readable and drawn to applicant's selected Species A (figs. 7-8). Claims 38-43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, and claims 44-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17-18, 20-26, 28-36, 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable Garcia (4,962,769) in view of Hayes (5,599,290).

6. Re claims 17-18, 20-21, 23, 26, 32, and 50, Garcia discloses a disposable garment 10 (fig. 1) for the care and prevention of wounds on a target area of the body of a user, the garment comprising: an absorbent portion having a fluid pervious inner sheet 15, a fluid impervious outer sheet 13 and at least one layer of absorbent material 11 or 14 positioned between the inner 15 and outer sheets 13 (best seen in fig. 2, col. 3, lines 18-29); and a wound care and prevention portion 12 coupled to the absorbent portion (fig. 2), the wound care and prevention portion including means for reducing pressure, said means for reducing pressure having an array of removable devices (air

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cells 18) forming a generally flexible sheet for supporting an area of the body of the user (fig. 5), at least one of the devices is selectably removable from the array in order to define a space in the sheet which approximates the size of target area on the body of the user (figs. 4-5, col. 3, lines 50-56), except that it is silent regarding each device is removably coupled to at least one other device. However, Hayes teaches a device for the care and prevention of wounds (bone fracture) on the body of a user, comprising: an array of removable cells 4 forming a flexible sheet (80 in fig. 10 or 2 in fig. 1), each cell removably coupled to at least one other cell (along junction 76 in fig. 10 or bond 23 in fig. 4), the cells being selectably removable from the array in order to define a space within the sheet which approximates the size of a desired area on the user's body (u-shaped in fig. 1). Hayes teaches the removable devices are suspension devices (Hayes, col. 8, lines 3-6); wherein each suspension device has opposing first 25 and second 26 surfaces (fig. 4), and wherein the first surface is configured for contacting the body of the user (col. 10, lines 52-54); wherein the array of devices are configured to support the target area (femur) of the user's body without contacting the target area (fig. 1, Hayes). Hayes also teaches that scissors can be used to cut along the junction 76 between adjacent cells 4, thus produce a strip of cells 4 of desired length and shape (col. 10, lines 49-63). Hayes also teaches a backing 30 attached to the sheet such that when at least one cell is removed (by cutting along the junction/bond) from the sheet, the portion of the backing in contact with the cell is removed (by cutting the backing along the junction/bond between cells) from the backing creating an opening (fig. 1); Hayes discloses the second surface comprises loop (piles) and the backing comprises

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hooks (col. 9, lines 26-37 and lines 53-59). This teaching would comprehend the claimed language of "each cell being removably coupled to one other cell and being selectably removable from the array". Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Garcia's device, to have the air cells removably coupled to one another by means of a backing, as suggested by Hayes, for the purpose of permitting the removal of a number of cells so that it could accommodate a suitable target area.

7. Re claims 22, 24-25, 33-35 and 51, Garcia further discloses the device comprising a plurality of straps for removably attaching the garment to the body of the user (fig. 1); the elastic leg bands connected to at least one of the inner and outer sheets (fig. 1); wherein the devices are gas-filled bubbles (air cells in fig. 2, col. 4, line 33) configured to support the areas around the coccyx (fig. 4-5).

8. Re claims 28-30, Garcia further discloses the space (void 25) within the sheet is defined by the devices removed from the array (fig. 4); wherein the garment is a diaper (fig. 1, col. 4, lines 31-40); wherein the wound care portion is configured to protect the buttocks and a portion of the back area of the user (fig. 3);

9. Re claims 31 and 36, since Hayes discloses a prickling device (scissor), which is capable of selectively deflating any bubble, it would have been obvious to one of ordinary skill in the art at the time of invention was made to use the scissor as a prickling device to selectively deflating any bubble for the purpose of permitting the removal of a number of cells that could accommodate a suitable target area.

10. Claims 27, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable Garcia/Hayes and further in view of Rollband (5,310,402). Garcia/Hayes discloses the claimed invention having all the features, except for a dye configured for marking an outline of the target area onto the first surface of the cells. However, Rollband teaches and suggests that a dye is used to make a marking on the tape (col. 4, lines 42-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device, to include a dye to mark an outline of the target area onto the first surface of the cells, as suggested by Rollband, for the purpose of allowing the user to cut out the device having a shape and length to fit the desired target area.

11. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable Garcia/Hayes and further in view of Gallagher (3,468,311). Garcia/Hayes discloses the claimed invention having all the features as discussed above, except that the backing does not include perforations along a border of each cell. Gallagher teaches an absorbent pad 10 having an array of air-filled cells 22 (fig. 1, col. 2, lines 3-5) having a plurality of perforations 26 along a border of each cell (fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the combined references, to include perforations along a border of each cell, as suggested by Gallagher, for the purpose of permitting unrestricted fluid to flow through the sheet into the absorbent layer (col. 2, lines 9-21).

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Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carver discloses a bed sore pad. LaPointe discloses a diaper to eliminate bed sores. Graebe discloses a cellular cushion. Mayer discloses an undersheet for preventing bed sores.

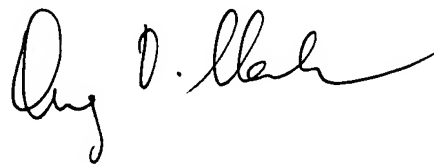
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both regular and After-Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Quang D. Thanh
Patent Examiner
Art Unit 3764
(571) 272-4982

May 06, 2005

A handwritten signature in black ink, appearing to read 'Quang D. Thanh', is written over the printed name and date.